

² *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21911-13.

Missouri statute provides that the MoPSC must determine whether effective competition exists for each telecommunications service of an incumbent local exchange carrier (ILEC) in each of the company's exchanges where an alternative local exchange telecommunications company has been certified.³ Therefore, the MoPSC established Case No. TO-2001-467 for the purpose of reviewing the status of competition in all of Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company (SWBT) exchanges (competition case). The MoPSC completed its review and issued its Report and Order on December 27, 2001 with an effective date of January 6, 2002.⁴

In the Missouri 271 proceeding, Case No. TO-99-227, the MoPSC found alternative local exchange companies were providing service to customers in all SWBT exchanges and that SWBT had opened its market to competition. However, in the competition case, the MoPSC noted that competitors are not providing service equally throughout all of SWBT's exchanges. The MoPSC stated that SWBT provides basic local telecommunications in 160 exchanges in Missouri, but competition is greatest in the heavily urbanized areas.⁵ Specifically addressing basic local service, the MoPSC found a substantial number of business customers are being provided functionally equivalent or substitutable basic local service from widely available competitive local exchange carrier (CLEC) owned facilities in the St. Louis and Kansas City exchanges.⁶ The MoPSC also found a substantial number of residential customers are being provided functionally equivalent or substitutable basic local service from widely available CLEC-owned cable telephony facilities in the St. Charles and Harvester exchanges.⁷ Accordingly, for these services in these exchanges, the MoPSC found effective competition exists and determined business or residential basic local service should be classified as competitive in those

³ 392.245.5 RSMo 2000

⁴ The MoPSC decision is currently on appeal in state court. "State of Missouri ex rel. Acting Public Counsel John Coffman vs. Public Service Commission of the State of Missouri, Case No. 02CV323762, Circuit Court of Cole County, Missouri."

⁵ Report and Order. *In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company*. Case No. TO-2001-467. Issued December 27, 2001. Page 13.

⁶ Id at page 23.

⁷ Id at page 33.

exchanges. In the remaining exchanges, the MoPSC found that competition from widely available CLEC-owned facilities did not exist for business or residential basic local service.

The MoPSC also reviewed the status of competition for switched (exchange) access services in SWBT exchanges. It found that SWBT was the dominant provider of exchange access services within its service territory. Since SWBT does not pay itself exchange access rates, the MoPSC found that switched access by its very nature is a locational monopoly. As such, it determined that SWBT's switched access service is not subject to effective competition.⁸

Based on its findings in the competition case, the MoPSC asserts that, after more than 5 years since implementation of the Telecommunications Act of 1996 (the Act), competition in Missouri has not reached the level envisioned by Congress. Therefore, MoPSC supports an examination into the status of competition prior to the sunset of the separate affiliate requirements of section 272.

SWBT's affiliates received authority to provide in-region, interLATA telecommunications services in Missouri on November 16, 2001. Missouri has been a leader in the SWBT biennial audit process. However, due to the timing of the FCC's approval of SWBT's Missouri 271 application, Missouri specific data was not included in the first section 272 SWBT audit.

The MoPSC has also been monitoring SWBT's performance measurements. Penalty payments associated with the performance measurements began in April 2001. Since that time, the trends seem to indicate SWBT is maintaining the status quo with respect to performance measures with no apparent improvement or deterioration in service provided to competitive carriers. Over the past year, SWBT has paid over \$1.6 million to CLECs and over \$620,000 to the Missouri treasury for Tier 1 and Tier 2 damages. These performance measures, and the resulting penalty payments are based on the Missouri 271 Agreement (M2A), which expires March 6, 2005. With a 3-year sunset provision, the separate affiliate requirements of section 272 would expire in November 2004, approximately 4 months prior to

⁸ Id. at pages 45-47.

the expiration of the performance measurement requirements as set forth in the M2A. The MoPSC is concerned with SWBT's performance and the potential discrimination beyond the sunset of section 272 and the expiration of the M2A.

The MoPSC asserts that without the section 272 audit process, there is no way to detect and deter discrimination and anti-competitive behavior. Therefore, the MoPSC suggests the section 272 separate affiliate safeguards be extended for at least one year beyond the current 3-year sunset period. Extending the sunset period for one year will provide for review of a more mature affiliate and will allow the inclusion of Missouri-specific data in the audit process.

Should the audit results, performance measurement trends and a review of the status of competition within the state not show favorable trends over the time allowed by the additional one-year extension, the MoPSC suggests that it would be appropriate to continue the separate affiliate requirements of section 272 on an annual basis until such time as the BOC no longer has an incentive and the ability to discriminate against long distance competitors or to engage in other anti-competitive conduct.

Respectfully submitted,

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